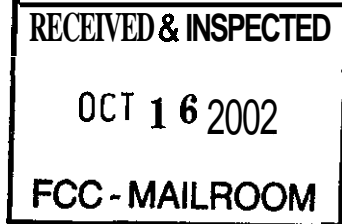


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Norway Rural Telephone Company)	
)	CC Docket No. 96-45
and)	
)	
Iowa Telecommunications Services, Inc.)	
d/b/a Iowa Telecom)	
)	
Joint Petition for Waiver of the Definition of)	
"Study Area" Contained in Part 36, Appendix)	
-- Glossary of the Commission's Rules)	
)	
Petition for Waiver of Sections 69.3(e)(11))	
and 69.605(c) of the Commission's Rules)	

ORDER

Adopted: October 11, 2002

Released: October 15, 2002

By the Acting Chief, Telecommunications Access Policy Division:

I. INTRODUCTION

1. In this Order, we grant a request from Norway Rural Telephone Company (Norway) and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom (Iowa Telecom) (collectively, Petitioners) for a waiver of the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission's rules.¹ This waiver will permit Iowa Telecom to remove the Corwith, Iowa and Klemme, Iowa exchanges, comprising approximately 300 and 500 access lines, respectively, from its Iowa study area. This waiver also will permit Norway to add the Corwith and Klemme exchanges that it intends to acquire from Iowa Telecom to its existing Iowa study area.

2. We also grant Norway's request for waiver of sections 69.605(c) and 69.3(e)(11) of the Commission's rules. Waiver of section 69.605(c) will permit Norway to retain average schedule status after acquiring from Iowa Telecom approximately 800 access lines that are currently under price-cap regulation. Waiver of section 69.3(e)(11) will permit Norway to

¹ See Norway Rural Telephone Company and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Petition for Waiver of Sections 69.3(e)(11) and 69.605(c) of the Commission's Rules (filed January 28, 2002) (Petition). See also Letter from Mary J. Sisak, Attorney for Norway Rural Telephone Company, to William F. Caton, Acting Secretary of the FCC (March 20, 2002) (Petition Supplement).

include immediately the acquired exchanges in the National Exchange Carrier Association, Inc. (NECA) common line tariff upon closing of the transaction.

II. STUDY AREA WAIVER

A. Background

3. **Study Area Boundaries.** A study area is a geographic segment of an incumbent local exchange carrier's (LEC's) telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. Thus, incumbent LECs operating in more than one state typically have one study area for each state. The Commission froze all study area boundaries effective November 15, 1984, and an incumbent LEC must apply to the Commission for a waiver of the study area boundary freeze if it wishes to sell or purchase additional exchanges?

4. **Transfer of Universal Service Support.** Section 54.305(a) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer.³ This limitation applies to high-cost loop support, local switching support, and long term support (LTS). Section 54.305 is meant to discourage carriers from transferring exchanges merely to increase their share of high-cost universal service support.⁴ For example, if a rural carrier purchases an exchange from a non-rural carrier that receives support based on the Commission's high-cost universal service support mechanism for non-rural carriers, the loops of the acquired exchange shall receive the same per-line support as calculated under the non-rural mechanism, regardless of the support the rural carrier purchasing the exchange may receive for any other exchanges.⁵

5. Notwithstanding the limitations provided in section 54.305(a), there are two circumstances under which rural carriers may receive additional high-cost support for acquired lines. First, the Commission recently amended section 54.305 to provide that a rural carrier may be eligible to receive additional high-cost loop support for new investments in acquired

² See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325 (1984); Decision and Order, 50 Fed. Reg. 939 (1985); see also *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990). See also 47 C.F.R. § 36 app..

³ 47 C.F.R. § 54.305

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8942-43 (1997) (*First Report and Order*), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999).

⁵ Rural carriers receive high-cost loop support based on the extent to which their reported average cost per loop exceeds 115 percent of the nationwide average cost per loop. See 47 C.F.R. §§ 36.601-36.631. The mechanism for non-rural carriers directs support to carriers based on the forward-looking economic cost of operating a given exchange. See 47 C.F.R. § 54.309.

exchanges under the Commission's "safety valve" mechanism! The total safety valve support available to all eligible carriers is limited to no more than five percent of rural incumbent LEC support available from the annual high-cost loop fund. Second, when the Commission established interstate common line support (ICLS) for rate-of-return carriers, it concluded that the limitations set forth in section 54.305(a) would not apply to such support.' Accordingly, an acquiring carrier is not limited to the amount of ICLS support that the selling carrier received.

6. ***The Petition for Waivers.*** On January 28, 2002, Norway and Iowa Telecom filed a joint petition for waiver of the study area boundary freeze and other related waivers. Norway is a rate-of-return carrier with average schedule status, and Iowa Telecom is a price cap carrier.' On February 19, 2002, the Common Carrier Bureau released a public notice seeking comment on the petition for waivers.' A study area waiver would permit Iowa Telecom to remove the Corwith, Iowa and Klemme, Iowa exchanges from its Iowa study area and permit Norway to include the acquired exchanges, totaling approximately 800 access lines, in its existing Iowa study area.

7. Norway also submitted an *ex parte* letter on August 14, 2002 providing its estimate of the initial Interstate Common Line Support (ICLS) that would be available to Norway as a result of acquiring lines from Iowa Telecom." The August 14 Letter states that, based on projected annual ICLS and access lines as of September 30, 2001, Norway will be

⁶ See 47 C.F.R. § 54.305(b)-(f). See also *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11276-84 (2001) (*RTF Order*), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. Jun. 1, 2001). The "safety valve" mechanism enables rural carriers acquiring access lines to receive additional high-cost loop support over a period of five years reflecting post-transaction investments made to enhance the infrastructure of and improve the service in acquired exchanges. Safety valve support provides up to 50% of any positive difference between a rural carrier's index year high-cost loop support expense adjustment for the acquired exchanges and subsequent year expense adjustments.

⁷ See also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166*, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, Report and Order and, Report and Order, 16 FCC Rcd 19613, 19667-69, paras. 155-157 (2001) (*MAG Order/NPRM*), recon. pending.

⁸ See Petition at 2-3

⁹ See Norway *Rural Telephone Company and Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom Seek Waiver of the Definition of "Study Area" in Part 36 of the Commission's Rules and Waiver of Section 69.3(e)(11) and 69.605(c) of the Commission's Rules*, Public Notice, DA 02-375 (rel. Feb. 19, 2002) (Notice).

¹⁰ See Letter from Benjamin H. Dickens, Jr., Counsel for Norway Rural Telephone Company, to Marlene H. Dortch, Secretary of the FCC, dated August 14, 2002 (August 14 Letter).

eligible to receive estimated annual ICLS of \$45,851.63.¹¹ The projected **annual** amount reflects the ICLS impact if the company were to be eligible for ICLS beginning July 1, 2002.¹²

8. **Standards for Waiver.** Generally, the Commission's rules may be waived for good cause **shown**.¹³ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed **valid**.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public **interest**.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, **or** more effective implementation of overall policy on an individual basis.¹⁶ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. In evaluating petitions **seeking** a waiver of the rule freezing study area boundaries, the Commission traditionally has applied a three-prong standard: (1) the change in study area boundaries must not adversely affect the universal service fund; (2) there must be no opposition to the transfer by any state commission having regulatory authority over the transferred exchanges; and (3) the transfer **must** be in the public interest. ''

9. In evaluating whether a study area boundary change will have **an** adverse impact on the universal service fund, we analyze whether a study area waiver will **result** in an **annual** aggregate **shift** in high-cost loop support in an amount equal **to or** greater than one percent of the total high-cost loop support fund for the year **2002**.¹⁸ The Commission began applying the one-percent guideline in 1995 **to** limit the potential adverse impact of exchange sales on the overall fund, also recognizing that, because of the indexed cap, an increase in the draw of any fund recipient necessarily reduces the amounts that other LECs receive from the **fund**.¹⁹ After adoption of section 54.305(a) of the Commission's rules, however, the one-percent guideline, was not, in practice, a limitation because section 54.305(a) provides that a carrier purchasing exchanges from an unaffiliated carrier is permitted to receive only the same level of per-line high-cost support that the selling company **was** receiving for the exchanges prior to the

¹¹ This estimate is based on data provided by NECA to NECA common line pool participants on April 19, 2002. *Id.*

¹² *Id.*

¹³ 47 C.F.R. § 1.3.

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁶ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ See, e.g., *U S WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, AAD 94-27, Memorandum Opinion and Order, 10 FCC Rcd 1771, 1772 (1995) (*Eagle Order*).

¹⁸ See *Eagle Order* at 1774, paras. 14-17. See *US West Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules and Petition for Waiver of Section 61.41(c) of the Commission's Rules*, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 4644 (1997) (*Eagle Reconsideration Order*).

¹⁹ *Eagle Order* at 1773, para. 13.

transfer.” Accordingly, by definition, section 54.305(a) ensured that there would be no adverse impact on the universal service fund. Consistent with past precedent, we now apply the one-percent guideline to determine the impact on the universal service fund, in light of the adoption of “safety valve” support, which allows an acquiring carrier to receive support for new investments in acquired lines, and ICLS, which does not limit the amount of such support that a carrier can receive for acquired lines.²¹

B. Discussion

10. We find that good cause exists to waive the study area boundary freeze codified in the Appendix-Glossary of Part 36 of the Commission’s rules to permit Iowa Telecom to remove the Corwith and Klemme exchanges from its Iowa study area, and to permit Norway to include the acquired exchanges in its Iowa **study** area. This waiver will permit Iowa Telecom to remove approximately 800 access lines from its Iowa study area, and permit Norway to add the approximately 800 access lines it intends to acquire from Iowa Telecom to its existing Iowa study area. For the reasons discussed below, we conclude that Petitioners have satisfied the three-prong standard that the Commission has applied to determine whether it should waive the study area freeze rule.

11. Because the proposed study area waiver will not result in a shift in high-cost support in **an** amount equal to or greater than one percent of the total high-cost support fund, we conclude that the universal service fund will not be adversely affected. High cost loop support, local switching support, and LTS are limited by section 54.305(a) of the Commission’s rules.²² Accordingly, Norway is limited to the same per-line levels of support that Iowa Telecom was receiving prior to the transfer. In this instance, Iowa Telecom has not been eligible for high-cost support, and therefore Norway will not receive such support on the lines it acquires from Iowa Telecom.²³ Although Norway may be eligible for safety valve support for investments in the acquired lines, we have no reason to believe that this amount would realistically exceed one percent of the total high-cost support fund. In reaching this conclusion, we note that the proposed study area waiver involves the transfer of only approximately 800 access lines. Moreover, an individual rural carrier’s safety valve support is capped at 50% of any positive difference between the amount of high-cost loop support that the rural carrier would qualify for in the index year for the acquired access lines and the support amounts that the carrier would qualify for in subsequent years.²⁴ The total amount of safety valve support available to rural carriers is also capped at five percent of annual high-cost loop support available to rural carriers

²⁰ See 47 C.F.R. § 54.305(a).

²¹ See *supra* para. 5 (discussing “safety valve” support and ICLS)

²² See 47 C.F.R. § 54.305(a).

²³ See Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for the Fourth Quarter **2002** (rel. August **2,2002**).

²⁴ See 47 C.F.R. § 54.305(d). See *supra* note 6. The term “rural carrier” refers to an incumbent local exchange carrier that meets the definition of “rural telephone company” in section 3(37) of the Communications Act of 1934, as amended. See 47 U.S.C. § 153(37). Because each of the Acquiring Companies provide telephone exchange service to local exchange study areas with fewer than 100,000 access lines, they all meet the definition of “rural telephone company” in the Act.

in any particular year, thereby providing an additional limitation on the amount of safety valve support available to **carriers**.²⁵

12. Likewise, we find that providing ICLS support to Norway will not result in more than a one-percent change in the total high-cost **fund**.²⁶ Norway estimates that it may be eligible to receive **annual** ICLS in the amount of \$45,851.63.²⁷ The total high-cost fund for the year 2002 is projected to be \$5.9 billion dollars, one percent of which would be \$59 million dollars. We therefore conclude that the total amount of \$45,851.63 that Norway estimates it will receive in ICLS, in addition to any amount Norway may be eligible to receive in safety valve support, will not have an adverse impact on the universal service **fund**.²⁸

13. Second, the state commission with regulatory authority over the transferred exchanges does not oppose the transfer. The Iowa State Utilities Board issued an order stating that it does not object to the grant of the study area waiver requested by **Petitioners**.²⁹

14. Third, we conclude that the public interest is served by a waiver **of** the study area boundary freeze rule. The waiver will permit Iowa Telecom to remove the Corwith and Klemme exchanges from its study area and permit Norway to include the acquired exchanges in its Iowa study area. In the Petition, **Petitioners** indicate that Norway is **an** established local exchange carrier with a lengthy and proven record of providing high-quality telecommunications facilities and services to residents and businesses in rural Iowa. Upon consummation of the proposed transaction, Norway plans to **deploy** signaling system 7 (SS7) to begin offering new services, such as calling name and **number**.³⁰ Norway also states that it intends to deploy digital subscriber line (DSL) service to these exchanges within one **year**.³¹ In addition, Norway plans to offer extended area service (**EAS**) to three of its Iowa **exchanges**.³² Based on these

²⁵ See 47 C.F.R. § 54.305(e).

²⁶ See 47 C.F.R. § 54.902

²⁷ See August 14 Letter at 2

²⁸ We acknowledge that in applying the one-percent rule to past study area waiver requests, the Commission has considered how much an acquiring company's universal service support would increase as a result of a transaction. See *generally Eagle Order*. In this case, however, such an analysis would not be useful. Because section 54.305 applies to high cost loop support, local switching support, and LTS, Norway is limited **to** the same per-line levels of support Iowa Telecom is receiving, and we have acknowledged that Iowa Telecom is not receiving support. As for safety valve support, we cannot predict or estimate how it will impact Norway's draw on the fund because safety valve support will not be calculable unless and until post-transaction investments are made. Similarly, while we have estimates for ICLS support, this is a new type of support that has never been included **in** the universal service fund. Thus, analyzing the "before and after" impact of Norway's potential draw of ICLS would have no significance.

²⁹ See Petition Supplement at 9 (Iowa *Telecommunications Inc., d/b/a Iowa Telecom, and Norway Rural Telephone Company*, Order Approving Joint Application for Discontinuance of Service and Authorizing Transfer of Certificate, Docket No. SPU-02-2 at 4 (March 12, 2002)).

³⁰ See Petition at 9.

³¹ *Id*

³² *Id.*

representations, we conclude that Petitioners have demonstrated that grant of this waiver request will serve the public interest.

15. In accordance with section 61.45 of the Commission's rules, we also require Iowa Telecom to adjust its price cap indices to reflect the removal of the transferred access lines from one of its Iowa study areas.³³ Section 61.45 of the Commission's rules grants the Commission discretion to require price cap carriers to make adjustments to their price cap indices to reflect cost changes resulting from rule waivers.³⁴ The Commission has required carriers to make adjustments to their price cap indices in past study area waivers involving the sale of the exchanges operated by carriers subject to price cap regulation.³⁵ We therefore require Iowa Telecom to make such an adjustment.

III. WAIVER OF THE COMMISSION'S AVERAGE SCHEDULE RULES

A. Background

16. Incumbent LECs that participate in NECA pools collect access charges from interexchange carriers at the rates contained in the tariffs filed by NECA.³⁶ Each pool participant receives settlements from the pools to recover the cost of providing service plus a pro-rata share of the pool's earnings.³⁷ NECA pool participants' interstate access charge settlements are determined either on the basis of cost studies or average schedule formulas. Cost companies are LECs that receive compensation for interstate telecommunications services based on their actual interstate investment and expenses, calculated from detailed cost studies. Average schedule companies are those incumbent LECs that receive compensation for use of their interstate common carrier services on the basis of formulas that are designed to simulate the disbursements that would be received by a cost study company that is representative of average schedule companies.³⁸ In electing average schedule status, average schedule companies are able to avoid the administrative and financial burdens of performing interstate cost studies.

17. Section 69.605(c) of the Commission's rules provides, in pertinent part, that "a telephone company that was participating in average settlements on December 1, 1982, shall be

³³ See *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, First Report and Order, 10 FCC Rcd 8961 (1995) (*LEC Price Cap Review Order*). The Price Cap Indices, which are the upper bounds for rates that comply with price cap regulation, are calculated pursuant to a formula specified in the Commission's rules for price cap carriers. See 47 C.F.R. § 61.45.

³⁴ See *LEC Price Cap Review Order*, 10 FCC Rcd at 9105-9106.

³⁵ See e.g. *Northland Telephone Company d/b/a PTI Communications, Inc. and US West Communications, Inc. Petition for Waiver of Sections 61.41(c)(2), 69.3(e)(6) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13329, 13336 (1997); *GTE North, Inc. and PTI Communications & Michigan, Inc., Petition for Waiver of Sections 61.41(c) and the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd 13882, 13888 (1997).

³⁶ See 47 C.F.R. § 69.601.

³⁷ See 47 C.F.R. §§ 69.601-69.612.

³⁸ See 47 C.F.R. § 69.606(a).

deemed to be an average schedule company[.]”³⁹ The definition of “average schedule company” includes existing average schedule incumbent LECs, but does not allow the creation of new average schedule companies or the conversion of cost-based carriers to average schedule status without a waiver of the Commission’s rules.⁴⁰ The limitation on the creation of new average schedule companies reflects the Commission’s finding that cost studies produce the most accurate financial information, and consequently, the most accurate interstate telephone rates.⁴¹ The Commission’s definition of “average schedule company” was designed to limit the use of average schedule formulas to companies that operated as average schedule companies prior to adoption of the rule or that are able to demonstrate compelling circumstances sufficient to warrant a special exception.⁴² Accordingly, absent a waiver of section 69.605(c), an average schedule company acquiring additional lines would be required to convert to operation as a cost-based company.⁴³ The Wireline Competition Bureau (Bureau), however, has granted waivers to certain small carriers that lacked the resources to operate on a cost-study basis.⁴⁴ Our actions on Norway’s request are guided by the principle that incumbent LECs settle on a cost basis whenever possible without undue hardship.

18. Norway has requested a waiver of section 69.605(c) of the Commission’s rules in order to continue operating as an average schedule company following the proposed acquisition of the Corwith and Klemme exchanges from Iowa Telecom.⁴⁵ In its petition, Norway states that “it would have to spend time, effort and funds on cost studies that it has heretofore been able to use to improve the quality of service furnished to its subscribers,” and notes that the Commission

³⁹ 47 C.F.R. § 69.605(c)

⁴⁰ An incumbent LEC may convert from an average schedule company to a cost company, but a carrier must obtain a waiver of section 69.605(c) to change from a cost company to an average schedule company. See 47 C.F.R. § 69.605(c).

⁴¹ See *MTS and WATS Market Structure: Average Schedule Companies*, CC Docket No. 78-72, *Memorandum una’ Order*, 3 FCC Rcd 6642 (1986) (*MTS and WATS Order*). The Bureau also has observed that company conversion to average schedule status may result in higher than reasonable interstate revenue requirements. See *NECA’s Proposed Waiver of Section 69.605(c) of the Commission’s Rules*, CC Docket No. 78-72, *Memorandum and Order*, 2 FCC Rcd 3960 (Com. Car. Bur. 1987) (5,000 *Line Waiver Order*).

⁴² See *Petition of Waiver Filed by Heartland Telecommunications Company of Iowa and Hickory Tech Corporation*, AAD No. 96-94, *Memorandum Opinion and Order*, 14 FCC Rcd 13661, 13662, para. 3 (1999).

⁴³ *Id.* at 13664, para. 7

⁴⁴ See *BPS Telephone Co. Petition for Waiver of Section 69.605(c) of the Commission’s Rules*, AAD No. 95-67, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 13820, 13824 (Acc. Aud. Div. 1997). See, e.g., *Dumont Telephone Company, Inc. and Universal Communications, Inc., Request for Extraordinary Relief*; AAD 96-94, *Memorandum Opinion and Order*, 13 FCC Rcd 17821 (Acc. Saf. Div. 1998) (waiver granted to Dumont Telephone Company, Inc. and Universal Communications, Inc., which had approximately 1,544 access lines); *Wilderness Valley Telephone Company, Inc., Petition for Waiver of Sections 69.605(c) and 69.3(e)(11) of the Commission’s Rules*, AAD 96-99, *Order*, 13 FCC Rcd 4511 (Acc. Aud. Div. 1998) (waiver granted to Wilderness Valley Telephone Company, Inc., which had approximately 75 access lines).

⁴⁵ See Petition at 3.

has previously granted waivers to average schedule companies with more access lines than Norway.⁴⁶

B. Discussion

19. We are persuaded that good cause exists to grant Norway's request for a waiver of section 69.605(c) of the Commission's rules. The Commission has permitted carriers of a similar size to elect to receive interstate compensation ~~from~~ average schedules ~~as~~ a way to avoid imposing the burdens and costs associated with performing cost separations studies needed to determine access charges.⁴⁷ The high cost of completing cost studies relative to the small size of Norway establishes the special circumstances that warrant granting Norway's request for a waiver of section 69.605(c) of the Commission's rules. We agree with Norway that it falls within the range of other average schedule companies that the Commission found did not have sufficient resources or expertise to justify conversion of their average schedule status to cost-based settlements.⁴⁸ We therefore find that Norway's requested waiver of section 69.605(c) of the Commission rules is in the public interest and should be granted.

I. WAIVER OF SECTION 69.3(e)(11) OF THE COMMISSION'S RULES

A. Background

20. Under section 69.3 of the Commission's rules, annual access tariffs, including the tariffs filed by NECA on behalf of companies that participate in NECA's access tariffs, go into effect on July 1 of each year.⁴⁹ Under section 69.3(e)(11), to minimize the complexity of administering NECA's common line pool and Long Term and Transitional **Support** (LTS) program, any change in NECA common line tariff participation and LTS resulting from a merger or acquisition of telephone properties is effective on the next annual access tariff filing effective date following the merger or acquisition.⁵⁰ Because the next ~~annual~~ access tariff filing effective date is not until July 1, 2003,⁵¹ Norway would be required to file its ~~own~~ interstate tariffs for the acquired access lines until July 1, 2003. In order to avoid the burdens associated with filing its own tariffs, Norway has requested a waiver of section 69.3(e)(11) of the Commission's rules to enable the acquired access lines to participate in the NECA carrier common line tariff upon the date of the closing of the transaction.⁵² Norway also indicates that the inclusion of the small

⁴⁶ See Petition at 5. Norway is adding **800** lines to its existing 670 lines.

⁴¹ See *BPS*, 12 FCC Rcd at 13824. See *supra* note 44. Norway is adding approximately **800** access lines to its existing 670 access lines.

⁴⁸ See Petition at 3-4.

⁴⁹ See 47 C.F.R. § 69.3(a).

⁵⁰ 47 C.F.R. § 69.3(e)(11). See *Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers or Acquisitions*, CC Docket No. 89-2, Report and Order, 5 FCC Rcd 231, 248 (1989).

⁵¹ See 47 C.F.R. § 69.3(a).

⁵² See *Petition* at 6-7.

number of access lines it is acquiring from Iowa Telecom would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.⁵³

B. Discussion

21. We find that Norway has demonstrated that special circumstances warrant a deviation from section 69.3(e)(11) of the Commission's rules and that it would be in the public interest to grant Norway's waiver request. We find that it would be administratively burdensome for Norway to develop and file its own interstate tariffs until July 1, 2003 for a relatively small number of access lines. Consequently, we find that Norway presents special circumstances *to* justify a waiver of section 69.3(e)(11). Moreover, we believe that a waiver of section 69.3(e)(11) will be in the public interest because Norway will be able to devote additional resources to providing improved telecommunications service to the affected rural areas. Absent the waiver, such resources would otherwise be utilized on tariff filings. We therefore conclude that good cause exists to grant Norway a waiver of section 69.3(e)(11) of the Commission's rules.

IV. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED**, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of the study area boundary freeze as codified in ~~Part~~ 36, Appendix-Glossary, of the Commission's rules, filed by Norway Rural Telephone Company and Iowa Telecommunications Services, Inc. ~~d/b/a~~ Iowa Telecom on January 28, 2002, **IS GRANTED**, as described herein.

23. **IT IS FURTHER ORDERED**, pursuant to sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 69.605(c) of the Commission's **rules**, 47 C.F.R. 69.605(c), filed by Norway Rural Telephone Company **IS GRANTED**, as described herein.

24. **IT IS FURTHER ORDERED**, pursuant to sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 69.3(e)(11) of the Commission's rules, 47 C.F.R. 69.3(e)(11), filed by Norway Rural Telephone Company **IS GRANTED**, as described herein.

⁵³ See Petition at 6-7

25. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, **as** amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, **and** sections 0.91, 0.291, 1.3, and 61.43 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 61.43, that Iowa Telecommunications Services, Inc. **d/b/a Iowa Telecom** SHALL ADJUST its price-cap indices in its annual price cap filing to reflect cost changes resulting from this transaction, consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Eric Einhorn', written over a horizontal line.

Eric Einhorn

Acting Chief, Telecommunications Access Policy Division